

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1300V

UNPUBLISHED

BRENDA KEARNS,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 17, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.*

*Matthew Murphy, U.S. Department of Justice, Washington, DC, for Respondent.*

## DECISION AWARDING DAMAGES<sup>1</sup>

On August 27, 2019, Brenda Kearns filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) after receiving the influenza vaccine on October 24, 2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 22, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On May 17, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$85,000.00 in compensation for her pain and suffering. Proffer at 1. In the Proffer, Respondent

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$85,000.00, representing compensation for her pain and suffering, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

s/Brian H. Corcoran

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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BRENDA KEARNS, )  
Petitioner, ) No. 19-1300V  
v. ) Chief Special Master Corcoran  
SECRETARY OF HEALTH AND HUMAN ) ECF  
SERVICES, )  
Respondent. )  
)

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On August 27, 2019, Brenda Kearns (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, **42 U.S.C. §§ 300aa-1 to -34** (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine she received on October 24, 2018. Petition at 1, 3. On March 22, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury, and on March 22, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 30; ECF No. 31.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent proffers that petitioner should be awarded \$85,000.00 in pain and suffering.

*See 42 U.S.C. § 300aa-15(a)(4).* Petitioner agrees.

This amounts represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$85,000.00, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Brenda Kearns:	<b>\$85,000.00</b>
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Respectfully submitted,

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Acting Assistant Attorney General

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Torts Branch, Civil Division

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Acting Deputy Director  
Torts Branch, Civil Division

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Assistant Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Matthew L. Murphy  
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Dated: May 17, 2021